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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-619

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Petitioner

v.

PILOT FREIGHT CARRIERS, INC.,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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OPINIONS BELOW

The memorandum order of the United States District Court for the Middle District of North Carolina denying motions for summary judgment is unreported and is reprinted at App. A, pp. 1a-3a *infra*. The order of the Court of Appeals granting respondent's motion to dismiss the appeal is unreported and is reprinted at App. B, pp. 4a-5a *infra*.

JURISDICTION

The order of the Court of Appeals dismissing the appeal was entered on September 2, 1977. This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Where a defendant has moved to dismiss a suit for breach of a collective bargaining agreement on the ground that the agreement requires arbitration of the question of breach, is the denial of such a motion appealable under 28 U.S.C. § 1291 in accordance with the "collateral order" doctrine of *Cohen* v. *Beneficial Ind. Loan Corp.*, 337 U.S. 541?

STATUTE INVOLVED

This case involves 28 U.S.C. § 1291, which provides:

> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

STATEMENT OF THE CASE

This petition arises out of two separate actions brought by respondent in the United States District Court for the Middle District of North Carolina against petitioner, under § 301(a) of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185. Respondent Pilot Freight Carriers, Inc. (hereafter "Pilot"), is a common carrier of general commodity freight; petitioner International Brotherhood of Teamsters (hereafter "IBT"), is a labor organization. In both actions Pilot presently seeks substantial damages for alleged violations by the IBT of the no-strike provisions of the National Master Freight Agreement (hereafter "NMFA"), a nationwide, multi-employer agreement: C-219-WS-72 (hereafter "*Pilot I*") grows out of a 1972 strike and asserts that the IBT violated the 1970-1973 NMFA; C-74-69-WS (hereafter "*Pilot II*") grows out of a 1974 strike and asserts that

the IBT violated the 1973-1976 NMFA. We need not describe these strikes, nor detail the issues on which plaintiff's claims against the IBT depend, for the present Petition relates to an anterior question: whether the merits are properly before the District Court at all, or whether, as the IBT has contended on motions for summary judgment, Pilot's exclusive remedy for breach of the agreements is the arbitration procedure established by those agreements. The specific issue raised by the Petition is narrower yet—whether an appeal lies from the District Court's order denying the IBT's motions, and holding that plaintiff may pursue its claims in court. Accordingly, a rather summary description of the complaints and the prior proceedings in these actions will suffice to put this Petition in its proper context.

A. The Complaints and Pilot's Reliance on the Agreements' Arbitration Provisions.

In both actions Pilot's complaint alleges that the contracts under which it sues "contain[] a grievance procedure established for the purposes of resolving all disputes between the parties involving the application and interpretation of such agreement." [1] In both actions that proposition was asserted by Pilot in support of motions to enjoin a work stoppage which was then in progress; on both occasions the District Court, purporting to rely on *Boys Markets* v. *Retail Clerks*, 398 U.S. 235, granted the motion and issued an injunction.[2]

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[1] *Pilot I*, Complaint ¶ 4; *Pilot II*, Complaint ¶ 5. In *Pilot II* the Complaint also alleged: "Plaintiff is willing to arbitrate the dispute created by the defendant labor organizations, and has filed grievances for the purpose of determining whether the employees covered by the aforesaid agreements have contractually bound themselves not to honor such a picket line and thereby engage in a work stoppage." (*Id.*, ¶ 10.)

[2] No appeal was taken from the granting of the injunction in *Pilot I*. In *Pilot II*, the Court of Appeals modified and affirmed the injunction (*Pilot Freight Carriers, Inc.* v. *Intern. Broth. of Teams.*,

B. The Motions for Summary Judgment, and Their Denial by the District Court.

The IBT filed separate motions in *Pilot I* and *Pilot II* for summary judgment dismissing the complaint on the ground that the arbitration provisions of the NMFA set forth Pilot's exclusive remedies for a claimed breach of that agreement. The IBT argued in both cases: (1) that this result is required by the agreement as read in light of the national labor policy in accordance with *Drake Bakeries* v. *Bakery Workers*, 370 U.S. 254, and decisions of all eleven circuits following that precedent; and (2) that Pilot, having obtained an injunction by asserting that the legality of the strike was arbitrable under the agreement, was precluded from taking the inconsistent position that the claim was not arbitrable.

In *Pilot II*, the IBT made the additional points that it was not even open to the District Court to hold that Pilot's claim was not arbitrable, because the Court of Appeals'

Etc., 497 F.2d 311 (4 Cir. 1974), *cert. denied*, 419 U.S. 869). As a necessary predicate for its decision the Court construed the arbitration provision of the 1973-1976 NMFA:

> "The National Master Freight Agreement in the present case *does have a mandatory grievance procedure* (Article 8) *regarding any dispute under the contract.* The relationship between the no-strike clause and the clause allowing individual employees to refuse crossing a primary picket line was, we think, an arbitrable matter, as is Pilot's contention about the underlying dispute, whether the local union or national union had directed or influenced concerted activity not to cross the picket line, as opposed to individual employees' decisions not to cross it. On the merits, the arbitration must decide whether Article 9, whatever its scope is found to be, had been complied with or whether the union is using Article 9 as a subterfuge to strike in violation of the agreement. We think the parties intended to submit disputes of this nature to arbitration, and, in any event, we must construe the agreement liberally in favor of arbitration. *United Steelworkers of America* v. *Warrior and Gulf Navigation Co.*, 363 U.S. 564, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960)." 497 F.2d at 313, emphasis supplied.

interpretation of the 1973-1976 agreement (see p. 4, n. 2, *supra*) was binding as the law of the case; and further that even if arbitration was not required by the NMFA, Pilot was bound to arbitrate by its own submission of the dispute to arbitration, notwithstanding its unilateral withdrawal therefrom.[3]

On January 13, 1977, the District Court (H. Ward, J.) denied both motions in separate paragraphs of the same memorandum (App. A, pp. 1a-3a *infra*).

C. The Appeal and Its Dismissal by the Court of Appeals.

The IBT promptly filed a notice of appeal, and docketed the appeal in the Court of Appeals. Thereafter, the District Court amended its prior order and certified the appeal under 28 U.S.C. § 1292(b).[4] The Court of Appeals,

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[3] On June 4, 1974, Pilot instituted a proceeding against the IBT before the National Grievance Committee established under the NMFA, asserting the same breach of contract claim which is the basis of *Pilot II*. In aid of that proceeding Pilot demanded, and IBT produced, voluminous records; thereafter, Pilot presented its case to the arbitrators. However, Pilot unilaterally withdrew from arbitration when the IBT moved to dismiss the *Pilot II* damage suit or to stay that suit pending completion of the arbitration proceeding. The District Court permitted that motion to lie dormant for over a year, and IBT subsequently filed the motion for summary judgment on which the District Court ultimately ruled.

[4] The Amendment read in full as follows:

> "The defendants in Case Nos. C-219-WS-72 ('Pilot I') and C-74-69-WS ('Pilot II') have requested that this Court amend its bench order of January 13, 1977, and certify those cases for immediate appeal pursuant to 28 U.S.C. § 1292(b).
>
> While the denial of a motion for summary judgment under normal circumstances is not appropriate for certification under 28 U.S.C. § 1292(b), the Court believes that these cases are far from average. 'Pilot I' and 'Pilot II' are anything but the ordinary personal injury or wrongful death suit for which 28 U.S.C. § 1292(b) has been determined to be inapposite. *Kraus* v. *Board of County Road Commissioners*, 364 F.2d 919 (6th Cir. 1966); *Cardwell* v. *Chesapeake & Ohio Railway Co.*, 504 F.2d

however, denied leave to appeal.[5] Pilot thereupon moved to dismiss the appeal for want of jurisdiction. The IBT opposed that motion, urging that where a party moves the District Court to dismiss a complaint because arbitration is the exclusive remedy, an order denying such motion is final for purposes of 28 U.S.C. § 1291 under the "collateral order" doctrine established in *Cohen* v. *Beneficial Ind. Loan Corp.*, 337 U.S. 541. IBT relied particularly on a decision of the Second Circuit which specifically held that such an order satisfies the requirements of *Cohen* (*Local 771, I.A.T.S.E., AFL-CIO* v. *RKO General, Inc.*, 546 F.2d 1107, see pp. 7-10, *infra*), and on a very recent analysis of the *Cohen* rule by this Court (*Abney* v. *United States*, — U.S. ——, 45 U.S.L.W. 4595, see pp. 10-12, *infra*). The Court of Appeals granted the motion to dismiss the appeal, without comment, see App. B, pp. 4a-5a, *infra*.

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444 (6th Cir. 1974). 'Pilot I' and 'Pilot II' are extremely complex and involve a myriad of facts. In all fairness the defendants have put forward controlling legal questions to which substantial grounds for a difference of opinion exists. Should the controlling law be otherwise than interpreted by this Court there is no doubt but that time and effort will be spared. For these reasons this Court amends its bench order of January 13, 1977, and hereby certifies Civil Cases C-219-WS-72 and C-74-69-WS for immediate appeal under the provisions of 28 U.S.C. § 1292(b)."

[5] The Court's order read in full as follows:

We have considered the petition for an interlocutory appeal and are of opinion it is without merit.

It is accordingly ADJUDGED and ORDERED that the petition for an interlocutory appeal shall be, and the same hereby is, denied.

With the concurrence of Judge Hall; Judge Haynsworth would grant the interlocutory appeal.

/s/ H. E. Widener, Jr.
(H. E. WIDENER, JR.)
For the Court

REASONS FOR GRANTING THE WRIT

I. The Decision Below Is in Conflict With a Recent Decision of Another Court of Appeals.

The decision of the Court of Appeals dismissing the appeal herein is in direct conflict with the decision of the Second Circuit in *Local 771, I.A.T.S.E., AFL-CIO* v. *RKO General, Inc.*, 546 F.2d 1107 (C.A. 2) (hereafter "*RKO General*"). There, the Second Circuit squarely held that in a suit under § 301(a) of the LMRA to enforce rights under a contract, an order of the District Court denying a motion to dismiss the complaint is appealable under 28 U.S.C. § 1291 where the ground for the motion was "that arbitration was the exclusive remedy under the contract" (*id.* at 1111).[6]

The Court stated the issue to be whether such an order "satisfies the conditions laid down by the Supreme Court in *Cohen* v. *Beneficial Ind. Loan Corp.*, 337 U.S. 541, 546 (1949) for appeal in certain exceptional cases from interlocutory orders determining collateral or separable rights that are 'too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated' " (546 F.2d at 1112, quoting 337 U.S. at 546). Judge Mansfield's reasoning in support of the conclusion that such an order "meets the *Cohen* criteria" (546 F.2d at 1112) merits quotation in full:

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[6] The factual background of the *RKO General* case was not material to the Court's holding that it had jurisdiction under 28 U.S.C. § 1291. It suffices to note, therefore, that there a union had made a claim under the collective bargaining agreement and sued under § 301(a) to enforce its rights under that agreement. Its grievance had originally been presented to an arbitrator who determined that it was time-barred and therefore refused to rule on the merits. The District Court confirmed the arbitrator's determination that arbitration had not been timely invoked, but denied the employer's motion to dismiss the complaint, ruling that arbitration was merely optional under the agreement (546 F.2d at 1111-1112).

"The interpretation of the arbitration provisions of the collective bargaining agreement presents an issue that is separable from and collateral to the main issue in the case, which is whether the employees who are members of Local 771 are entitled to be assigned to news-gathering and editing functions in the operation of minicam units. Under analogous circumstances we have held that an issue regarding the right to trial in a different forum is separable from and collateral to the merits for purposes of applying the *Cohen* rule. *CAB* v. *Aeromatic Travel Corp.*, 489 F.2d 251 (2 Cir. 1974) (whether CAB had primary jurisdiction held appealable). See also *Local 438 Construction & General Laborers Union, AFL-CIO* v. *Curry*, 371 U.S. 542, 548-50, 83 S.Ct. 531, 9 L.Ed. 2d 514 (1963); *Mercantile National Bank* v. *Langdeau*, 371 U.S. 555, 558, 83 S.Ct. 520, 9 L.Ed.2d 523 (1963) (involving Supreme Court review under 28 U.S.C. § 1257).

The Company's claim that the district court's decision violates the national labor policy in favor of minimum judicial intervention and exclusivity of arbitration conducted under the terms of labor agreements, see *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960), unquestionably presents an important question, the gravity of which is emphasized by the similarity of the arbitration provision in the Agreement at issue to the 'standard form,' see *United Steelworkers of America* v. *American Mfg. Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); *Bonnot* v. *Congress of Independent Unions Local No. 14*, 331 F.2d 355 (8th Cir. 1964).

Finally, the Company's right to be relieved of the costs and delays of trial, which it claims to have gained through the contract's arbitration provisions, will be lost irretrievably if proceedings in the case go forward in the district court. This case is analogous to *United States* v. *Beckerman*, 516 F.2d 905 (2d Cir. 1975), where we recognized that an immediate appeal was essential to protect and enforce the defendant's claim, based on double jeopardy grounds, to be free from any further proceedings in the district court, rather than ultimately to gain a judgment in his favor after further protracted proceedings. See also *Weilbacher* v. *J. H. Winchester & Co.*, 197 F.2d 303 (2d Cir. 1952). This claim, which appears to be more than merely colorable in the present case, distinguishes the case from a run-of-the-mill attempted piecemeal appeal from a denial of a motion to dismiss, which is not appealable for the reason that the appellant may prevail at trial or ultimately be vindicated upon appeal from an adverse final judgment. Accordingly, we uphold the Company's right to appeal under the *Cohen* rule * * *" (546 F.2d at 1112-1113).

The present case is indistinguishable from *RKO General.* The question of the arbitrability of the Company's claims that the defendant breached the no-strike clause of the NMFA is clearly collateral to the merits of those claims; indeed, the very point of the motion for summary judgment—and the purpose of the arbitration provision—is to assure that the merits be determined by an arbitrator rather than by a court. The identical national labor policy favoring arbitration is involved whether a party seeks to compel arbitration in preference to a judicial resolution of the dispute (as here[7] and in *Nolde Bros.* v. *Bakery*

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[7] In *Pilot I* the Company has refused to arbitrate its claim and in *Pilot II* the Company withdrew in the middle of the arbitration proceeding. See pp. 4-5, and particularly p. 5, n. 3, *supra*. And while we think that the terms of the arbitration provision are less material to the issue of immediate appealability than to the issue of arbitrability, we note that, as the Court of Appeals determined at a prior stage of this litigation, "[t]he National Master Freight Agreement in the present case does have a mandatory grievance procedure (Article 8) regarding any dispute under the contract." See p. 4, n. 2, *supra*.

Workers, 430 U.S. 243), or is seeking to enforce an arbitration award already entered (as in *RKO General* and *Steelworkers* v. *Enterprise Corp.*, 363 U.S. 593). Finally, it is just as true here as it was in *RKO General* that the defendant's "right to be relieved of the costs and delays of trial, which it claims to have gained through the contract's arbitration provisions, will be lost irretrievably if proceedings in the case go forward in the district court." 546 F.2d at 1112. That these costs would be substantial is implicit in the District Court's certification that these cases "are extremely complex and involve a myriad of facts" and that if its order should be reversed on appeal "there is no doubt but that time and effort will be spared" (see p. 6, n. 4 cont., *supra*).

In short, the failure of the court below to explain its order cannot obscure the conflict of decisions between the Circuits: When a defendant moves to dismiss a § 301 (a) complaint on the ground that the arbitration provisions of a collective bargaining agreement provide the exclusive remedy for a breach thereof, and the District Court denies the motion, such an order is appealable in the Second Circuit, but not in the Fourth.

II. The Decision Below Is Inconsistent With This Court's Teaching That 28 U.S.C. § 1291 Must Be Given a "Practical Rather Than a Technical Construction."

It is likewise clear, despite the Court of Appeals' silence, that in dismissing the appeal herein it ignored this Court's instruction that the term "final decision" in 28 U.S.C. § 1291 is to be given a "practical rather than a technical construction" (*Cohen, supra*, 337 U.S. at 546), and most particularly the recent application of the *Cohen* principle in *Abney* v. *United States*, 45 U.S.L.W. 4594 (June 9, 1977). In *Abney* it was unanimously held that "although the pretrial denial of a motion to dismiss an indictment on double jeopardy

grounds is obviously not 'final' in the sense that it terminates the criminal proceedings in the District Court", "it is nevertheless within the 'collateral order' exception to the final judgment rule first announced in *Cohen* * * *" (*id.* at 4595). In holding that such an order is appealable, this Court approved the decisions of several courts of appeals, including that of the Second Circuit in *United States* v. *Beckerman*, 516 F.2d 905, to which the *RKO General* Court had analogized the problem in this case, see p. 9, *supra*. The aptness of that analogy and, more significantly, the inconsistency between the decision below and this Court's interpretation of 28 U.S.C. § 1291 readily appears when we track the Chief Justice's reasoning in *Abney*:

First, even as the denial of a motion to dismiss an indictment on double jeopardy grounds "constitute[s] a complete, formal and, in the trial court, a final rejection of a defendant's double jeopardy claim," (*id.* at 4596), so here the District Court's denial of the motions for summary judgment constitutes "a complete, formal and, in the trial court, a final rejection of" the defense that the procedures under the arbitration provisions of the agreement are exclusive.

Second, just as "the very nature of a double jeopardy claim is such that it is collateral to, and separable from, the principal issue at the accused's impending criminal trial, *i.e.*, whether or not the accused is guilty of the offense charged" (*id.*), so too, the arbitrability of a claimed breach is entirely distinct from the question on the merits, *i.e.*, whether the defendant violated the no-strike promise (or any other duty to perform under the agreement).

Third, the Chief Justice observed that "the rights conferred on a criminal accused by the Double Jeopardy Clause would be significantly undermined if appellate

review of double jeopardy claims were postponed until after conviction and sentence" because "even if the accused is acquitted, or, if convicted, has his conviction ultimately reversed on double jeopardy grounds, he has still been forced to endure a trial that the Double Jeopardy Clause was designed to prohibit." *Id.* at 4596-4597. So too, even if a defendant charged with breaching a collective bargaining agreement should win on the merits after trial, or if after a judgment were entered for the plaintiff an appellate court were to hold that the court should not have reached the merits of the claim, the defendant's interest "in obtaining a prompt and inexpensive resolution of [its] disputes by an expert tribunal," would have been totally destroyed, for "the alternative remedy of a lawsuit is the very remedy the arbitration clause was designed to avoid." *Nolde Bros., Inc., supra,* 430 U.S. at 254.[8]

Thus, the result reached below cannot be reconciled with "the core principle that statutorily created finality requirements [expressly including 28 U.S.C. § 1291] should, if possible, be construed so as not to cause crucial collaterial claims to be lost and potentially irreparable injuries to be suffered * * *" (*Mathews* v. *Eldridge*, 424 U.S. 319, 331, n. 11).

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[8] The Court in *Abney*, in turn, expressly recognized that:

> "A cogent analogy can be drawn to the *Cohen* decision. There, the corporate defendant claimed that the state security statute, if applicable, conferred on it a right not to face trial at all unless the dissatisfied shareholder first posted security for the costs of the litigation. By permitting an immediate appeal under those circumstances, this Court made sure that the benefits of the statute were not 'cancelled out.'" (45 U.S.L.W. at 4597, n. 7, emphasis added.)

So here, the IBT's claim has been that the arbitration provisions of the agreements confer on it the right not to face trial at all; permitting an immediate appeal is necessary to make sure that the benefits of those provisions are not "cancelled out."

III. The Decision Below Frustrates the National Labor Policy and Efficient Judicial Administration.

Review and reversal of the judgment below is called for not only to achieve uniformity of decisions in the courts of appeals, and harmony with the jurisdictional principles established by this Court, but also to promote two important public policies. What has already been said is sufficient to demonstrate that the decision below frustrates, and that of the Second Circuit in *RKO General* effectuates, the "well-established federal labor policy favoring arbitration as the means of resolving disputes over the meaning and effect of collective-bargaining agreements" (*Nolde Bros., supra,* 430 U.S. at 254), which, as was there reaffirmed, is embodied in § 203(d) of the LMRA, 29 U.S.C. § 173(d). But it is equally true, if perhaps less obvious, that the decision below tends to subvert the very interests of judicial administration which the finality requirement is intended to serve.

Given the existence of tens of thousands of labor-management contracts and the myriad controversies which daily arise thereunder, the burden on the federal courts imposed by the jurisdictional grant of § 301(a) would be exceedingly onerous—both in terms of the courts' workload and the acknowledged limitations on their institutional competence—if the parties did not, in their own self-interest, customarily agree to resolve such disputes by arbitration and other private methods of adjustment. See, *Buffalo Forge Co.* v. *Steelworkers*, 428 U.S. 397, 410-411. These perhaps unintended, but assuredly significant, benefits to judicial administration can be fully realized only if erroneous denials of arbitrability are set aside before, rather than after, there has been a full-blown trial on the merits of the underlying labor-management controversy.

CONCLUSION

For the foregoing reasons, this Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Memorandum of the District Court

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

Civil Action
Nos. C-215-WS-72
C-219-WS-72
C-74-69-WS
C-75-76-WS

PILOT FREIGHT CARRIERS

v.

LOCAL 391, IBT, et al.

MEMORANDUM

This matter was scheduled for hearing on all pending motions in the United States Courtroom, United States Courthouse and Federal Building, Winston-Salem, North Carolina, January 13, 1977. William K. Davis, Esq., J. W. Alexander, Jr., Esq., and John Pollard, Esq., appeared as counsel for the plaintiff. Robert Higgins, Esq., Ira Mitzner, Esq., Renn Drum, Esq., Jonathan Axelrod, Esq., Hugh Beins, Esq., and Norman B. Smith, Esq., appeared as counsel for the defendants.

The several motions before the Court are resolved as follows:

I. In C-219-WS-72, Pilot v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, the union's motion for summary judgment is denied. The union asserts that the National Master

Freight Agreement requires arbitration of all questions prior to the pursuit of any court action against the union. This Court recognizes the broad national policy favoring arbitration emphasized by the Supreme Court in Drake Bakeries v. Local 50, American Bakery & Confectionery Workers International, AFL-CIO, 370 U.S. 254, 8 L.Ed. 2d 474, 82 S.Ct. 1346 (1962), and by the Fourth Circuit in H. K. Porter Co. v. Local 37, United Steelworkers of America, 400 F.2d 691 (4th Cir. 1968).

In *H. K. Porter* the Fourth Circuit said "The obligation to arbitrate must be found in the collective bargaining agreement. It is a matter of contract, and in the absence of agreement, a party cannot be required to submit a dispute to arbitration (citation omitted). But in construing the contract, doubts must be resolved in favor of arbitration." In the present case the Court has no doubts to be resolved in favor of arbitration.

Article 8(a) of the National Master Freight Agreement requires "All grievances or questions of interpretation arising under this Master Agreement . . ." to be submitted to arbitration. That language is not nearly so broad as the contract provisions in *Drake Bakeries, supra,* or *H. K. Porter, supra.* The contract in *Drake Bakeries* required arbitration of "all complaints, all disputes, and all grievances . . . or any contract of either party." The contract in *H. K. Porter* calls for the arbitration of "any grievance or disagreement which cannot be settled between the Employer and the Union. . ." Moreover the explicit wording of the National Master Freight Agreement excludes this claim for damages from arbitration. In outlining the arbitration process the agreement establishes procedures for settling disputes concerning "unauthorized" strikes. The strike in question, however, is admittedly an authorized strike. A procedure to be followed in handling authorized strikes is conspicuously absent. The contract reserves the rights of both parties to

seek judicial relief in other situations by stating "Nothing herein shall prevent the Employer or Union from securing remedies granted by law except as specifically set forth in this subsection." Therefore, the closing statement specifically reserves the right of Pilot to seek legal relief in the way of damages for an authorized strike.

II. In C-74-69-WS, Pilot v. Local 31, International Brotherhood of Teamsters, et al., the defendant International's motion to dismiss or alternatively to stay proceedings pending arbitration and the defendant International's motion for summary judgment are likewise denied. The Court is fully aware that the National Master Freight Agreement in force at the time of the 1974 strike differs from the contract which was in issue in the preceding motion. In addition to having language similar to the contract provisions discussed in the previous motion, the 1973-1976 agreement contains even more explicit language removing this matter from the type of dispute which is to be arbitrated.

Article 44 of the 1973 to 1976 agreement provides that "there shall be no strike without using all possible means for settlement. . . ." Following a description of the procedure to be utilized to settle grievances which are arbitrated, the agreement expressly provides that "nothing herein shall prevent legal proceedings by the Employer where the strike is in violation of this Agreement." Therefore, if the union strikes without first resorting to arbitration, as in the present case, the arbitration requirement is negated and the contract specifically allows the employer to seek legal relief. Therefore, all of the defendant IBT's motions for arbitration are denied.

APPENDIX B

Order of the Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

[Filed Sep. 2, 1977]

No. 77-1704

PILOT FREIGHT CARRIERS, INC.,
Appellee,

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,
Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Winston-Salem.
Hiram H. Ward, District Judge.

ORDER

After careful consideration of all the papers filed in this matter,

IT IS ORDERED that appellee's motion to dismiss the appeal for want of a final judgment be granted. The motion of the appellant for a writ of mandamus is denied.

Done with the concurrence of Chief Judge Haynsworth and Judge Hall.

A True Copy, Teste:

William K. Slate, II, Clerk

By /s/ Faye L. Smith
Deputy Clerk

/s/ H. E. Widener, Jr.
United States Circuit Judge